



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2005

Ms. Zandra L. Pulis
Legal Services Division
City Public Service of San Antonio
P.O. Box 1771
San Antonio, Texas 78296-1771

OR2005-00360

Dear Ms. Pulis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 216650.

The San Antonio City Public Service (the "service") received a request for the winning proposal, pricing, and bid evaluations for a specified request for proposals. You state that some of the requested information has been released. You do not take a position on the public availability of the remaining information at issue, but you state that release of some of the information may implicate the proprietary interests of Clean Harbors Environmental ("CHE"), Onyx Environmental Services ("Onyx"), Trans-Cycle Industries, Inc. ("TCI"), and U.S. Ecology. You inform us that you have notified these interested third parties of the service's receipt of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). TCI and U.S. Ecology have responded to the notice and argue that some of the requested information is excepted under section 552.110 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that most of the requested information is identical to information that was previously ruled upon by this office. In Open Records Letter No. 2004-10760 (2004), this office considered arguments submitted by TCI and U.S. Ecology and ultimately concluded that the service was required to withhold 1) some of TCI's customer information under section 552.110(a) of the Government Code, 2) some of TCI's financial information under

section 552.110(b) of the Government Code, 3) U.S. Ecology's pricing information under section 552.110(b) of the Government Code, and 4) insurance policy and credit card numbers we had marked under section 552.136 of the Government Code. The service was directed to release the remaining information that was at issue, including information pertaining to Onyx, which did not submit arguments against disclosure as allowed under section 552.305(d) of the Government Code. Similarly, in response to the instant request, Onyx has not submitted arguments against disclosure to this office. As the facts and circumstances surrounding that ruling do not appear to have changed, you may rely on that ruling as a previous determination with regard to the information pertaining to TCI, U.S. Ecology, and Onyx that was at issue in it. *See* Open Records Decision No. 673 at 6-7 (2001) (criteria of previous determination regarding specific information previously ruled on).¹

The only information currently before us that was not at issue in our previous ruling is information pertaining to CHE, and we address that information now. We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, CHE has not submitted to this office its reasons explaining why the requested information relating to it should not be released. Consequently, CHE has provided this office with no basis to conclude that its responsive information is excepted from disclosure. *See id.* § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, we conclude that you may not withhold any portion of the submitted information relating to CHE on the basis of its proprietary interests.

In summary, the service may continue to rely on Open Records Letter No. 2004-10760 (2004) with regard to the information of TCI, U.S. Ecology, and Onyx that was at issue in that ruling. CHE's information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

¹At issue in our previous ruling was information concerning Onyx, TCI, U.S. Ecology, and the current requestor, TDS.

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

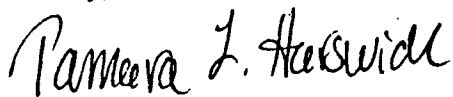
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Tamara L. Harswick".

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 216650

Enc. Submitted documents

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